

1 Hon. Robert S. Lasnik
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 MARTHA KARL,

11 Plaintiff,

12 v.

13 CITY OF MOUNTLAKE TERRACE,
14 CHARLES "PETE" CAW, SCOTT HUGILL,

15 Defendants.

16 No. C09-1806 RSL

17 MOTION TO STRIKE EXTRANEous
18 CONTENT IN CR 37 JOINT SUBMISSION

19 COMES NOW Plaintiff, pursuant to Local Rules CR 37 and CR 7(g)(2), and moves this
20 court to strike all extraneous content submitted by Defendants as part of the CR 37 Joint
21 Submission.

22 **BACKGROUND**

23 Plaintiff and Defendants agreed to utilize the expedited CR 37(a)(1)(B) motion to resolve
24 the dispute over the scope of the alleged mediation confidentiality. Defendants, the moving
25 party, submitted their initial pleading to Plaintiff on Friday, July 23, 2010. Supplemental
26 Shaeffer Dec. ¶ 1. On Wednesday, July 28, the defense supplied a corrected version of the brief
(correcting a typo), along with the Declaration of Brenda Bannon. Supp. Shaeffer Dec. ¶ 2 and
Exs. 1 and 2. Plaintiff responded with her portion of the pleading and the Declaration of Andrea
Brenneke on Friday, July 30, 2008. Supp. Shaeffer Dec. ¶ 3. Defendants filed the "Joint"
submission with extraneous, new content, argument, and evidence that Plaintiff has never seen or

MOTION TO STRIKE EXTRANEous CONTENT IN CR 37 JOINT
SUBMISSION - 1

No. C09-1806 RSL
9554.01 dh066307

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Tel 206.622.1604 Fax 206.343.3961

1 had an opportunity to address and that exceeds the half-page Defendants' "Reply" to which they
2 were entitled. The extraneous content includes:

- 3 I. Section I. Legal Issue Presented, including the lengthy footnote 1;
- 4 II. Section II. Evidence Presented, including footnote 2;
- 5 III. Section VIII. Reply - 20:13-22 including footnotes 11 and 12 (Defendants note
6 they are entitled to half a page, not a full page);
- 7 IV. The entire Defense Appendix - 94 pages of legal authority;
- 8 V. Declaration of Brenda Bannon - 1:17-18; 1:21-2:23; 3:10-11; and 4:3-5:19.
- 9 VI. The entire Declaration of Michael Bolasina.

10 ARGUMENT

11 The expedited discovery process is designed to promote expeditious resolution of
12 discovery disputes. It relies on a series of exchanges of information to ensure the moving party
13 sets forth all of its argument and evidence and the responding party has proper notice and an
14 opportunity to respond. The rule contemplates a very short reply, not substantive new argument
15 and evidence to which the non-moving party has not had an opportunity to address.

16 Local Rule CR 37 (a)(1)(B)(iv) provides: "The moving party's reply, if any, in support
17 of a disputed discovery request shall follow the opposing party's rebuttal for such request in the
18 joint submission and shall not exceed one half page for each reply."

19 In this case, the defense raises new legal arguments and new evidence that Plaintiff has
20 never seen and did not have an opportunity to brief in response. That violates the Civil Rules
21 and the spirit of a joint submission. The extraneous materials should be stricken.

22 CONCLUSION

23 Plaintiff respectfully requests that this court strike the following extraneous content:

- 24 I. Section I. Legal Issue Presented, including the lengthy footnote 1;
- 25 II. Section II. Evidence Presented, including footnote 2;
- 26 III. Section VIII. Reply - 20:13-22 including footnotes 11 and 12 (Defendants note
27 they are entitled to half a page, not a full page);

MOTION TO STRIKE EXTRANEous CONTENT IN CR 37 JOINT
SUBMISSION - 2

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- IV. The entire Defense Appendix - 94 pages of legal authority;
- V. Declaration of Brenda Bannon - 1:17-18; 1:21-2:23; 3:10-11; and 4:3-5:19.
- VI. The entire Declaration of Michael Bolasina.

DATED this 12 day of August, 2010.

Respectfully submitted,

MacDONALD HOAGUE & BAYLESS

By Andrea Brenneke, WSBA #22027
Joseph R. Shaeffer, WSBA #33273
Attorneys for Plaintiff

**MOTION TO STRIKE EXTRANEous CONTENT IN CR 37 JOINT
SUBMISSION - 3**

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Mark R. Bucklin, WSBA # 761
mbucklin@kbmlawyers.com
Brenda L. Bannon, WSBA # 17962
bbannon@kbmlawyers.com
Keating Bucklin & McCormack, Inc., P.S.
800 Fifth Avenue, Suite 4141
Seattle, WA 98104-3175

DATED at Seattle, Washington, this 17th day of August, 2010

Jennifer King

MOTION TO STRIKE EXTRANEous CONTENT IN CR 37 JOINT
SUBMISSION - 4

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